Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Relicensing of Certain Part 90 Frequencies to Require Spectrally Efficient Use	)	RM-9705
	)	

To: The Commission

OPPOSITION OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads ("AAR"), by its undersigned counsel, pursuant to Section 1.405 of the rules of the Federal Communications Commission ("Commission"),[1] and in response to the Public Notice released August 24, 1999,[2] hereby submits its Opposition to the above captioned Petition for Rule Making submitted by the American Mobile Telecommunications Association, Inc. ("AMTA").[3]

I. Background and Preliminary Statement

AAR is a voluntary, non-profit organization composed of Class I member railroad companies operating in the United States, Canada and Mexico. AAR is the joint representative and agent of these railroads in connection with federal regulatory matters of common concern to the industry as a whole, including matters pertaining to regulation of communications. In addition, AAR functions as the frequency coordinator

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[1] See 47 C.F.R. § 1.405.

[2] Public Notice, Petitions for Rule Making Filed, Report No. 2356 (rel. Aug. 24, 1999).

[3] Petition for Rule Making, filed by the American Mobile Telecommunications Association, Inc. (July 30, 1999) ("AMTA Petition").

with respect to operation of land mobile and other radio-based services. Accordingly AAR is pleased to have this opportunity to share its views with the Commission regarding the AMTA Petition.

AAR has contributed to, and expressly supports the Joint Opposition of the Industry Coalition being filed today in this proceeding under separate cover.[4] This opposition represents the views of 20 associations that regularly represent various members of the private wireless community before the Commission and Congress. The Joint Opposition presents in detail the substantive factual, legal, and public policy fallacies in the AMTA Petition, and urges that it be summarily dismissed. AAR will not restate all of these arguments here, but rather will take this opportunity to underscore the unjustified adverse affect that AMTA's proposals would have on the safe and efficient operation of the nation's railroads.

II. Railroad Radio Operations in the 450-470 MHz Band are Vital to the Safe and Efficient Operation of the Nation's Railways and Cannot be Compromised in Favor of Commercial Operations.

As the Commission is aware, the railroad industry makes extensive use of land mobile radio systems and fixed service ("FS") microwave links for the operation and control of train movements.[5] The North American railroad industry deploys and depends upon a comprehensive and sophisticated communications network to carry

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[4] See Joint Opposition of the Industry Coalition, filed by Alliance of Motion Picture and Television Producers, et al. (September 23, 1999) ("Joint Opposition").

[5] See e.g., Comments of Association of American Railroads in WT Docket No. 99-87, filed August 2, 1999; Comments of Association of American Railroads in ET Docket No. 95-18, RM-7927, filed March 5, 1995; Railroads' Comments in Response to SkyBridge Application (11 GHz Band), filed December 15, 1997.

voice and data traffic which is integral to the minute-to-minute management and control of train movements throughout the rail network. This vital communications network is used to interconnect the trackside radio facilities (both mobile and fixed) with the centralized dispatching center in each railroad's operating region.

Radio communications between trains and central dispatchers are essential to protect railroad employees and the general public. Only radio can provide immediate information on the location, direction and speed of hundreds of trains operating at the same time on each major railroad in the country. This information is indispensable to railroad safety. In this regard, a 1994 "Report to Congress" by the Federal Railroad Administration reviewed in detail the various types of railroad communications systems, including those used for train movement and control, switching operations, defect detection and emergency response, and concluded that radio communications were an integral part of railroad safety planning and execution.[6]

Among the most vital links in the railroad radio network are end-of-train devices that have replaced the caboose in favor of a two-way radio link. These devices, installed at the end of the last car on a train, transmit to the crew in the locomotive information on the status of end-of-train brake pressure and other vital data. In the reverse direction, the system enables the train crew in the locomotive to remotely engage the brake system at the end of the train, an important safety enhancement. In fact, these systems are so integral to the safe operation of the rail network, they are

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[6] Railroad Communications and Train Control, Federal Railroad Administration, Department of Transportation Report to Congress, July 1994 at 22-34 (hereafter FRA Report).

mandated by Federal law.[7] Significantly, these critical safety-related systems are deployed on channels that are subject to the AMTA Petition.[8] The same channels are used by some railroads for devices used to remotely control mid-train locomotives that are placed within a train to assist the lead locomotive in mountainous regions by providing auxiliary starting, pulling and braking actions (as described in Note 59 to Section 90.35 of the Commission's rules). Under the AMTA proposal, a railroad operator of an end-of-train telemetry system or mid-train remote control system would be faced with the following Hobson's Choice: relocate the railroad system onto a frequency shared with the entire population of users of the Industrial/Business pool;[9] or, replace the system with a subscription service provided by a commercial service provider.[10] Obviously, neither of these choices is acceptable, given the critical safety function and given that trains travel in remote areas of the nation where no commercial service exists.

The Commission confirmed the public safety function of the railroad frequencies in the 450-470 MHz band in the "refarming" proceeding when it determined that the critical nature of railroad communications required a higher standard of interference

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[7] See 49 U.S.C. § 20141.

[8] See 47 C.F.R. § 90.35(b), (c)(59) (The Industrial/Business Pool Frequency Table identifies eight frequency pairs in the 452/457 MHz range that assigned primarily for the purpose of controlling slave locomotives.)

[9] See AMTA Petition at 23 (Under the AMTA proposal all of the channels in the 450-470 MHz band currently allocated on shared basis for Industrial/Business eligibles, approximately 12 MHz, would be compressed onto approximately 2 MHz of spectrum. The remaining 10 MHz would be auctioned for commercial operation.)

[10] Id at 31.

protection.[11] More recently, the Commission reaffirmed this public safety function when it expanded the interference protection afforded railroad radio services, finding a "legitimate safety issue concerning the frequencies that were assigned to the former. . . Railroad Radio Service."[12] AMTA's implicit suggestion that railroad radio operations can accept vastly increased co-channel interference stands in direct contrast to the Commission's repeated findings regarding the heightened level of protection that these operations require. Similarly, AMTA's suggestion that private wireless applications like end-of-train telemetry systems can be replaced with commercial service is completely unsupported, and totally untenable. As described above, these are on-board, self-contained communications systems used for intra-train telemetry; they are installed on trains that travel in remote mountain and desert areas that are far away from any population centers and far removed from the coverage areas of any commercial operators. There simply is no subscriber-based commercial service available as a substitute for these unique operations.

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[11] *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, ¶ 41 (Granting AAR exclusive coordination authority for frequencies formerly assigned on an exclusive basis to the Railroad Radio Service).

[12] *Second Memorandum Opinion and Order*, PR Docket No. 92-235, (rel. April 14, 1999), 64 Fed. Reg. 36258.

III. Conclusion

Whenever the Commission contemplates new rules as proposed in the AMTA Petition, the public interest demands that the Commission consider very carefully the impact of these rules on the diverse private radio community, especially with respect to those services operating in safety-critical businesses such as the railroad industry. From AAR's perspective, the AMTA Petition has failed to offer any consideration of the adverse impact of its proposals on safety-critical railroad radio operations. Consequently, AMTA has failed to present an adequate public interest justification for its petition. The AMTA Petition should therefore be summarily dismissed without any further action or consideration by the Commission.

Respectfully submitted,

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Certificate of Service

I, Helene McGrath, of the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, hereby certify that a copy of the foregoing was served this 23rd day of September, 1999, via first class mail, postage prepaid, upon the following:

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